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IN THE

Supreme Court

of the

United States

OCTOBER TERM, A. D. 1964

NO. 223

RAYMOND CARTER,
Petitioner,

V.

ZULA WINTER, also known as MRS. A. E. WINTER, and THERESA HOENOW,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

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a) THIS CASE IS REPORTED IN 50 Ill. App. 2d 467, 200 N.E. 2d 528, and 32 Ill. 2d 275, 204 N.E. 2d 755, and said opinions are reprinted in the Appendix hereto.

b) GROUNDS FOR JURISDICTION:

i) *The date of judgment:* January 21, 1965.

ii) *Rehearing denied:* March 17, 1965. Stay of mandate granted sixty (60) days from the above date, March 17, 1965. Additional stay of mandate granted thirty (30) days from May 15, 1965 by the Illinois Supreme Court to prepare this Petition for Writ of Certiorari.

iii) *Statutory provisions conferring jurisdiction:* Section 1257 (3) of Title 28, United States Code.

c) QUESTIONS PRESENTED FOR REVIEW:

1) Is civil trial by jury as provided in the United States and Illinois Constitutions a fundamental right protected against arbitrary abridgement by a State Judiciary?

2) Is an arbitrary decision of a State Supreme Court regarding the fundamental right of civil trial by jury a denial of due process as applied to the States through the Fourteenth Amendment?

3) Is the decision of the Illinois Supreme Court such gross and obvious error that it constitutes arbitrary action and therefore a denial of due process?

d) THE CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND REGULATIONS APPLICABLE:

Seventh Amendment to the United States Constitution:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

Fourteenth Amendment to the United States Constitution, Section 1:

> "Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State

wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article 2, Section 5, of the Illinois Constitution:

"The right of trial by jury as heretofore enjoyed, shall remain inviolate."

Article 6, Section 5, of the Illinois Constitution:

". . . Appeals from the Appellate Court shall lie to the Supreme Court as a matter of right only (a) in cases in which a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court, . . ."

Chapter 110, Section 101.32 (3) (a), Illinois Revised Statutes, effective January 1, 1964:

"Appeals from the Appellate Court shall lie to the Supreme Court as a matter of right in cases in which a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court. . . ."

e) STATEMENT OF THE CASE:

This is a personal injury action growing out of a collision between an automobile driven by petitioner, Raymond Carter, and one driven by Theresa Hoenow and owned by Zula Winter. The accident occurred on U.S. 66, a short distance north of Springfield, Illinois, on a four lane highway. Petitioner was proceeding south in the outside lane of traffic when his automobile was hit in the rear by the automobile being operated by Theresa Hoenow and proceeding in the same direction.

The case was submitted to a jury in the trial court, which